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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,771	01/16/2002	W. Michael Anderson	MS1-869US	7777
22801	7590	08/31/2005	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			BAYERL, RAYMOND J	
			ART UNIT	PAPER NUMBER
			2173	
DATE MAILED: 08/31/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/050,771

Applicant(s)

ANDERSON ET AL.

Examiner

Raymond J. Bayerl

Art Unit

2173

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112 rejection of claims 4, 32.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 - 4, 6 - 8, 10 - 15, 17 - 22, 25 - 29, 32 - 33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No.(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2173

30 August 2005

Continuation of 3. NOTE: The proposal to amend claim 1 such that "a third button" is "configured to cycle through and select a desired band" introduces a limitation not specifically considered prior to final rejection. Similar problems are introduced with the proposals for claim 6 ("a fifth set of buttons configured to move forward and backward through elements"), claim 11 ("the conditional audio control bands do not affect the audio output unless a function requiring an audio output is activated with the fourth button") and 13 ("a third set of buttons configured to select a preset item, wherein the preset item is dependant on the selected band").

Continuation of 11. does NOT place the application in condition for allowance because: Regarding independent claims 19, 26, which applicant does not seek to amend, the selection of sub-items after obtaining an initial selection between "primary" and "conditional audio control bands" reads upon the combination of Clayton (US #6,725,022), where such a "band" variety is accessible, when taken in view of the admission in the prior art that a car radio was known to allow for a top-level selection between the known AM, FM, CD "bands", followed by a sub-item selection within the selected band. Given Clayton's diversity of selections, and the form of distinction that exists between a "primary" and a "conditional band", the person having ordinary skill in the art would have found obvious the placement of a division along these lines at the top level of the car radio interface, since the prior art systems already divided their selection choices along lines of differentiation between media types (e.g., AM is talk-oriented while FM has music, but CD is random user-accessible, these being types that dictate the choices at the top level of the interface).